

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

**BECKLEY DIVISION**

CHRIS UMBERGER,

Plaintiff,

v.

CIVIL ACTION NO. 5:09-cv-00720

CORRECTION OFFICER TAYLOR and  
CORRECTION OFFICER FORD,

Defendants.

**MEMORANDUM OPINION AND ORDER**

The Court has reviewed the Petitioner's pro-se, letter-form motion to dismiss this action [Docket 10]. For good cause shown and without objection, the Court **ORDERS** that the Petitioner's motion to dismiss [Docket 10] be **GRANTED**, and further **ORDERS** that this matter be **DISMISSED WITHOUT PREJUDICE**<sup>1</sup> and **REMOVED** from the Court's docket.

The Court has additionally considered whether to grant a certificate of appealability. See 28 U.S.C. § 2253(c). A certificate will not be granted unless there is "a substantial showing of the denial of a constitutional right." Id. § 2253(c)(2). The standard is satisfied only upon a showing that


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<sup>1</sup>By *Standing Order* [Docket 3] entered on June 25, 2009, this action was referred to the Honorable R. Clarke VanDervort, United States Magistrate Judge, for submission to this Court of proposed findings of fact and recommendation for disposition, pursuant to 28 U.S.C. § 636. On March 1, 2010, the Magistrate Judge submitted *Proposed Findings and Recommendation* [Docket 6] wherein he recommends that this Court dismiss the Petitioner's case without prejudice for failure to prosecute. This Court notes that, absent the filing of the Petitioner's motion to dismiss, filed after the submission of the Magistrate Judge's *Proposed Findings*, this Court would have adopted the well-reasoned findings contained in the *Proposed Findings*, and would have dismissed the Petitioner's case without prejudice for failure to prosecute as recommended therein.

reasonable jurists would find that any assessment of the constitutional claims by this Court is debatable or wrong and that any dispositive procedural ruling is likewise debatable. Miller-El v. Cockrell, 537 U.S. 322, 336-38 (2003); Slack v. McDaniel, 529 U.S. 473, 484 (2000); Rose v. Lee, 252 F.3d 676, 683-84 (4th Cir. 2001). The Court concludes that the governing standard is not satisfied in this instance. Accordingly, the Court **DENIES** a certificate of appealability.

The Court **DIRECTS** the Clerk to send a certified copy of this Order to Magistrate Judge VanDervort, counsel of record, and any unrepresented party.

ENTER: April 5, 2010

  
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IRENE C. BERGER, JUDGE  
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF WEST VIRGINIA